IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.06.2007

Coram

The Honourable Mr.Justice M.CHOCKALINGAM

CRP.NPD.No.1605 of 2006
and
MP.No.1 of 2006

S.Gunabooshnam ...Petitioner/Plaintiff
(Respondent)

-vs-

1. Helan Paul
2. B.Agustus
3. B.Anbuprisilla
4. B.Anbusaral ...Respondents/Defendant
Petitioners

Civil Revision Petition against the order passed by the learned District Munsif, Attur, in I.A.No. 252 of 2005 in O.S.No. 230 of 2005 dated 28.7.2006.

For Petitioner : Mr.C.Jagadish

For respondent : Mr.S.Janakiraman

ORDER

Challenge is made to the order of the learned District Munsif, Attur made in I.A.No.252 of 2005 to condone the delay 165 days in making the application to set aside the ex parte order passed by the court on 10.6.2005 in O.S.No.230 of 2005 in a suit for specific performance on the strength of written agreement in respect of an immovable property.

2. The Court heard the learned counsel on either side.

3. Admittedly, an ex parte decree came to be passed on 10.6.2005 in the said suit. An application to set aside the ex parte decree was made by the defendants. In doing so, there was a delay of 165 days. In order to condone the same, instant application I.A.No.252/2005 was filed. The said application was allowed on 28.7.2006. The said order passed by the court below is the subject matter of challenge before this Court.

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4. The only contention urged by the learned counsel for the revision petitioner/ plaintiff is that after passing an order of ex parte decree on 10.6.2005, I.A.No.252 of 2005 was filed to condone the delay of 165 days in making an attempt to set aside the ex parte decree. The matter was called on 14.7.2006. Since Judicial Officer was on leave on that day, the matter was adjourned to 25.7.2006 and on that date, the counsel for the revision petitioner could not be present. When the matter was taken up in the morning session, it was adjourned to 28.8.2006 for filing counter. Thereafter to the surprise of the revision petitioner, the matter was taken up in the afternoon session and adjourned the case on 28.7.2006 without giving notice to the petitioner. On that day the application was allowed. Thus it was an order passed without giving notice to the revision petitioner for the hearing on 28.7.2006. Apart from that, no counter was also filed and thus it was a denial of opportunity to the plaintiff in making his submission in so far as the application to condone the delay was concerned. Hence, the order of the lower court has got to be set aside.

5.Contrary to the above contentions, it is contended by the learned counsel respondents/ defendants that the order passed by the Court in condoning the delay of 165 days in I.A.No.252 of 2005 has to be sustained for the reason that only after due notice and appearance of the plaintiff, the order came to be passed on 28.7.2006. It is too late for the revision petitioner to bring forth such an allegation seeking to set aside the order of the lower court and hence, the application has got to be dismissed.

6. After careful consideration of the rival submission made, the Court is of the considered opinion that the order of the lower court has got to be sustained, however with some costs. In the instant case, it is true that ex parte decree came to be passed on 10.6.2005. It is not in controversy that the application to set aside the ex parate decree was presented by the defendants along with the instant application to condone the delay of 165 days. It is also not in controversy that the revision petitioner / plaintiff was given notice, appeared therein and matter was posted for few hearings and order came to be passed on 28.7.2006.. Now the contention put forth by the learned counsel for the petitioner is that originally the matter was adjourned to 28.8.2006, but it was reposted to 28.7.2006, for which no notice was given. The Court is of the considered opinion that in order to avoid the avoidable delay, the order of the lower court need not to be set aside and the matter need not to be remitted back to the lower court as it was only a delay of 165 days in making an application to set aside the ex parte decree, that too, in a suit for specific performance. Now the lower court has allowed the application but it is brought to the notice of this Court that it allowed without costs. In the circumstances, it requires that cost has to be awarded. Hence, the respondents/ defendants are directed to make payment of Rs.1000/- to the revision petitioner/ plaintiff within a period of four

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weeks here from, failing compliance of the same, the lower court is directed to take the application to set aside the ex parte decree on file and give an opportunity to the plaintiff to file his counter and consider the same on merits and dispose of the same in accordance with law.

7. With the above observation the Civil Revision Petition is disposed of. No costs. Consequently, connected MP is closed.

bg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

District Munsif, Attur.

+2 ccs to Mr.C.Jagadish, Advocate Sr.No.36292.

+1 cc to Mr.S.Janakirman,Advocate Sr.No.36700.

BV(CO)
dcp/5.7.07

CRP.NPD.No.1605 of 2006

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